

THE RHODE ISLAND.¹

District Court, S. D. New York. June 10, 1885.

STEAMER'S SWELL—DAMAGE CAUSED
THEREBY—LIABILITY.

Where the swell from a passing steamer overwhelmed and sank a loaded canal-boat lying at a bulk-head, and it appeared that the canal-boat was lying in a proper place, well known to the pilot of the steamer, and also that the steamer was proceeding at a high rate of speed, *held*, that the steamer was liable for the damage.

In Admiralty.

Hyland & Zabriskie, for libelant.

Miller, Peckham & Dickson, for claimants.

BROWN, J. On the twenty-sixth of December, 1883, the canal-boat Helen, loaded with coal, was lying along the bulk-head at the foot of Sixty-second street, East river, being the outside boat of four that lay alongside. Between 10 and 11 o'clock in the forenoon the large passenger steamer Rhode Island, coming down the East river, caused a large swell, which broke over the canal-boat and filled her with water so that she sank in four minutes. This libel was filed to recover the damages.

The principles of law applicable to the conflicting rights of large passenger steamers and of canal-boats about the harbor, in all respects similar to the Helen, have been considered in repeated decisions of the circuit court, which are binding and conclusive upon me. *The C. H. Northam*, 13 Blatchf. 31; *The Morrisania*, Id. 512; *The Daniel Drew*, Id. 523, 532. See, also, *The Massachusetts*, 10 Ben. 177; *The Drew*, 22 FED. REP. 853.

In the case of *The Batavia*, 9 Moore, P. C. 286, in the privy council, it was said that if the steamer "was going at such a rate as made it dangerous to any craft,

which she ought to have seen, she had no right to go at that rate; at all events, she was bound to stop, if it was necessary to do so, in order to prevent damage being done by the swell to the craft that were in the river. She ought not to have made that swell in the river if she was aware that there was any vessel that might be damaged and put in jeopardy by her doing so.”

This canal-boat was an open boat, loaded so that her sides were about two feet out of water. She lay at a place long used for the discharge of such boats, as was well known to the pilot of the Rhode 296 Island. She had been lying in the same position for three days awaiting her discharge. During this interval many steamers must have passed back and forth, at all times of the tide, several of them of equal size with the Rhode Island; and the Rhode Island during this interval probably passed there twice herself; and none of these had previously done any damage. On the day in question the Rhode Island was some five or six hours behind time, having been delayed during the night by fog. Her engineer says that her time from Hallett's Point to her pier in the North river, a distance of 9 or 10 miles, was made in 32 minutes, which would be her full speed of 18 miles per hour. The engineer and the captain testify, indeed, that her speed was reduced from 19 revolutions per minute, her full speed, to 15 revolutions per minute, in passing this part of Blackwell's island, where the west branch of the river is only from 800 to 900 feet wide. But the engineer, at least, speaks from his general habit only, and not from recollection of this occasion. Two other witnesses upon the shore testify that the steamer appeared at this time to be going at unusual speed.

Considering that no previous damage had been done, the fair inference to be drawn from all the circumstances and the testimony is that the Rhode Island on this occasion was going at her full speed, which was an unusual and improper speed for this

locality, and that this speed caused a greater swell than common, and thereby produced the accident. Upon this ground the libelant is entitled to recover. A reference may be taken to compute the amount, if not agreed upon.

¹ Reported by R. D. and Edward G. Benedict, Esqs., of the New York bar.

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